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MEMO ENDORSED

August 11, 2020

BY ECF

Hon. Katherine Polk Failla
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

Re: **Case Name: Susan Petersen vs. 234 West 48 LLC, et al;**
Docket No. 19 Civ. 5063 (KPF)

Hon. Judge Failla:

This firm represents the plaintiff in the above-referenced matter. This letter is submitted in accordance with Your Honor's Rule 3(c) and with Local Rule 37.2 requesting a pre-motion discovery conference.

We have conferred with defendant's counsel on multiple occasions by telephone and email and have been unable to resolve the issues to date.

On August 21, 2019, Plaintiff served the Defendants with a First Request for production of documents. (Exhibit 1). Plaintiff's deposition was held on December 6, 2019 and Defendant produced a witness for a deposition on February 20, 2020. The parties had and have conferred on multiple occasions both prior to defendant's deposition and at defendant's deposition where a clear record was made that plaintiff had not received any document discovery. (Exhibit 2).

On March 20, 2020, we received defendant's purported responses to plaintiff's First request for production of documents. (Exhibit 3). On May 13, 2020, we wrote to defendant's regarding the deficiencies in its responses. (Exhibit 4). Specifically, defendant failed to provide, the names of all employees working at defendant's premises on the date of the accident, all contracts between the defendants, all records regarding plaintiff's stay at defendant's hotel, all maintenance/repair records for the elevators which were malfunctioning prior to plaintiff's accident, the lease of subject premises, all

contracts with third parties regarding the maintenance of its elevators, and a copy of excess policy. To date, we have not received a response to our May 13, 2020 letter, nor have we received the discovery demanded.

Additionally, on May 13, 2020, we served the defendants with Post-Deposition demands. (Exhibit 5). We did not receive any response. We contacted the defendants on July 22, 2020 advising that to date we had still not received response to plaintiff's Post-Deposition demands and plaintiff's letter dated May 13, 2020. (Exhibit 6). To date, we have not received a response to plaintiff's Post-Deposition demands or received the Post deposition discovery demanded.

Further, the defendants have failed to exchange any video of the accident in addition to any video of the floors where plaintiff was staying, elevator videos of the plaintiff, and videos of the lobby and exterior of the hotel for the hour prior to the accident up to and including when the plaintiff was removed from the hotel premises by ambulance.

Finally, we have requested the manager of Hotel on the date of the accident, Ben Elie be produced for a deposition. Defendants had agreed to produce Mr. Elie despite advising plaintiff that he was no longer employed by defendants. To date, he has not been produced. As such on May 13, 2020 (Exhibit 4) we demanded his last known address, so plaintiff can serve him with a subpoena to appear for a non-party deposition. To date, we have not received his address.

As such, we respectfully request the Court schedule a pre-motion discovery conference pursuant to Your Honor's Rules 3(c) and with Local Rule 37.2 requesting a discovery conference or in the alternative refer the pre-motion discovery conference to Magistrate Lehrburger.

We thank the Court for its consideration of this matter.

Respectfully,



Harris Marks

cc: all parties by ECF

The Court is in receipt of the above letter motion from Plaintiff. (Dkt. #22). Defendants are hereby ORDERED to respond to the above letter on or before **August 14, 2020**.

SO ORDERED.

Dated: August 11, 2020
New York, New York



HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE